

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

=====X Cr. No. 13-607 (JFB)
UNITED STATES OF AMERICA,

- against -

PHILLIP KENNER and
TOMMY CONSTANTINE, also known
as “Tommy C. Hormovitis”

NOTICE OF MOTION

Defendants.

=====X

PLEASE TAKE NOTICE that upon the declaration of Richard D. Haley, Esq., the affidavit of Philip A. Kenner, sworn to on January 12, 2015, together with the exhibits annexed hereto, along with the accompanying memorandum of law, the undersigned moves this Court for an Order:

1. Pursuant to F.R. Crim. P. 12(b)(3)(C) and F.R. Crim P 47 suppressing the electronically stored data (“computer files”) contained on the hard drive of the defendant’s Apple Macbook computer and i-Phone, seized during the execution of a search warrant on November 13, 2013, from being introduced into evidence upon the trial of the matter.

2. Authorizing the issuance and service of subpoenas pursuant to F.R.Crim.P 17(c) on John R. Kaiser, Kenneth Aboud Jowdy, Bryan Berard, Ethel Kaiser, Northern Trust Bank and Charles Schwab International for the production of documents in accordance with “Schedule A” as described in “Exhibit C” annexed hereto.

3. Directing the government to disclose exculpatory material within the meaning of Brady v. Maryland, 373 U.S. 83 (1963); United States v. Giglio, 405 U.S. 150 (1972) and United States v. Bagley, 476 U.S. 667 (1985) consisting of (a) statements made by prospective government witnesses from September 12, 2014 to the present which are exculpatory in nature and (b) statements made by Michael Peca,, Darryl Sydor and Turner Stevenson concerning the subject matter of their

testimony before a grand jury previously impaneled in the United States District Court of the Southern District of New York to investigate the business activities of the defendant.

4. Granting leave of the defendant to join in all relevant motions made by his co-defendant not inconsistent with the relief requested herein.

PLEASE TAKE FURTHER NOTICE that upon the pretrial motion schedule approved by this Court the government will submit its response to the instant motion on or before February 20, 2015 and the defendant will submit his reply in support of the instant motion on or before February 27, 2015.

Dated: Islandia, New York
January 26, 2015

Richard D. Haley
RICHARD D. HALEY
Haley Weinblatt & Calcagni, LLP
Attorney for Defendant, Philip A. Kenner
1601 Veterans Memorial Highway
Islandia, New York 11749
(631) 582-5151

TO: Clerk of the Court (ECF)
AUSA James M. Miskiewicz via ECF
AUSA Saritha Komatireddy via ECF
Robert R. LaRusso, Esq. via ECF